Environment and Land Tribunals Ontario

Annual Report 2010-2011

Contact Information:

Environment and Land Tribunals Ontario
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Tel: (416) 212-6349
Toll free: 1-866-448-2248
Fax: (416) 314-3717
Toll free fax: 1-877-849-2066

Website: www.elto.gov.on.ca

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ISBN 978-1-4435-6637-7 (print 2010-2011 ed.)
ISSN 1925-6876 (print)

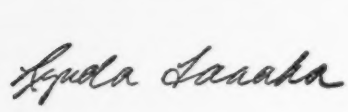
Environment and Land Tribunals Ontario
www.elto.gov.on.ca

To the Honourable Chris Bentley, Attorney General

Minister:

We have the pleasure of submitting, for the approval of the Legislature, the Environment and Land Tribunals Ontario, 2010-2011 Annual Report.

Respectfully submitted,



Lynda Tanaka
Executive Chair
Environment and Land Tribunals Ontario

Ali Arlani
Chief Executive Officer
Environment and Land Tribunals Ontario

2011

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PART 1: Environment and Land Tribunals Ontario (ELTO)

Chair's Message - 2011

On behalf of all Members and staff, I am pleased to present the 2010-2011 Environment and Land Tribunals Ontario Annual Report. This report covers the fiscal year ending March 31, 2011.

The Environment and Land Tribunals Ontario (ELTO) brings together five Ontario tribunals and boards which adjudicate matters related to land use planning, environmental and heritage protection, property assessment, land valuation and other matters. The tribunals have a key role in resolving disputes, within the applicable legislative frameworks, to support strong, healthy communities and achieve outcomes that are in the public interest.

In 2010-2011, ELTO defined its mission and core values. An accessibility policy was developed. As well, ELTO implemented a new website - www.elto.gov.on.ca and revised the five tribunal websites with a common interface. Position descriptions were developed for the positions of Associate Chair, Vice Chair and Member. Copies of the descriptions were posted on the website.

In May of 2011, I was appointed as Executive Chair of ELTO. I offer my thanks to Michael Gottheil, former Executive Chair of ELTO, for his leadership in transitioning the tribunals into ELTO and his vision that has laid the foundation for ELTO's future success.

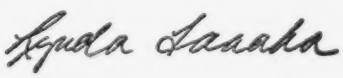
I would also like to acknowledge the important contributions of those Members who have left the tribunals. We are grateful for their work on behalf of the people of Ontario. Sadly, we note the passing of John Milne who served for more than ten years with the Board of Negotiation.

As Executive Chair of ELTO I plan to build on the proud history and strengths of the tribunals to enhance their individual and collective expertise. I want to draw on the knowledge, abilities and ideas of all who work at ELTO, and who use or are affected by its services, to improve our services.

ELTO will provide service in a fair, transparent, timely, accessible and professional manner. Staff and members will act with integrity and work together to foster excellence at the tribunals. Together we will provide excellent service to the public.

I look forward to working with Members, staff, stakeholders and the broader community throughout the 2011-2012 fiscal year and beyond to refine and enhance the services provided by ELTO.

Sincerely,



Lynda Tanaka
Executive Chair - Environment and Land Tribunals Ontario

About Environment and Land Tribunals Ontario (ELTO)

Environment and Land Tribunals Ontario (ELTO) brings together five Ontario tribunals and boards which adjudicate matters related to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

ELTO is created under the authority of the Adjudicative Tribunals Accountability, Governance, and Appointments Act, 2009. That act permits the government to designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone.

The tribunals which comprise Environment and Land Tribunals Ontario are:

The **Assessment Review Board (ARB)**, which hears property assessment appeals to ensure that properties are assessed and classified in accordance with the provisions of the Assessment Act. The Board also operates under a variety of other legislation and hears appeals on property tax matters.

The **Board of Negotiation (BON)**, which conducts voluntary mediation in the event of a dispute over the value of land expropriated by a public authority. If no settlement is reached, the matter may be appealed to the Ontario Municipal Board.

The **Conservation Review Board (CRB)**, which conducts proceedings where there are disputes concerning properties that may demonstrate cultural heritage value or interest, or disputes surrounding archaeological licensing. After determining a matter, the Board then makes recommendations to the final decision-making authority in the particular case, either a local municipal council or the Minister of Culture.

The **Environmental Review Tribunal (ERT)**, which hears applications and appeals under numerous environmental and planning statutes including the Environmental Bill of Rights, 1993, the Environmental Protection Act, the Ontario Water Resources Act and the Safe Drinking Water Act, 2002. The Tribunal also functions as the Niagara Escarpment Hearing Office to hear development permit appeals and Niagara Escarpment Plan amendment applications for this protected World Biosphere Reserve, and serves as the Office of Consolidated Hearings to hear applications for joint hearings where separate hearings before more than one tribunal would otherwise be required.

The **Ontario Municipal Board (OMB)**, which hears applications and appeals in relation to a range of municipal planning, financial and land matters including official plans, zoning by-laws, subdivision plans, consents and minor variances, land compensation, development charges, electoral ward boundaries, municipal finance, aggregate resources and other issues assigned to the Board by numerous Ontario statutes.

Mandate, Mission and Core Values

Mandate

ELTO is a group of five tribunals that resolve appeals, applications and other disputes, under some 100 statutes, in relation to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

Mission

ELTO and its constituent tribunals will strive for excellence and demonstrate the highest standards of public service in:

- Delivering modern, fair, accessible, effective and timely dispute resolution services
- Demonstrating consistency in procedures and outcomes while remaining responsive to differing cases and party needs, and to an evolving development of the law
- Responding to the needs of diverse stakeholder communities
- Resolving disputes, within the applicable legislative framework, to support strong, healthy communities and achieve outcomes that are in the public interest.

Core Values

Core values are the guiding principles of ELTO and the foundation on which its constituent Tribunals fulfill their mandates.

Accessibility

- Publications, communications and facilities, including hearing and mediation rooms, will provide for full and equitable access.
- Diversity will be fully respected and reflected in all that ELTO does.
- Processes will be designed in a way that facilitates informed participation. Proceedings will be conducted in a manner which is welcoming and respectful.
- Practices and procedures will provide for a meaningful, effective opportunity to be heard on the relevant issues to be resolved in a particular case.

Fairness

- Proceedings will be conducted impartially. Decisions will be principled and based on the facts, the applicable law and policy, and on the merits of the case.

Transparency

- Tribunal procedures, rules, policies and decisions will be clear and readily available to the public. Reasons for decisions will be concise and will explain how the decision was reached.

Timeliness

- Proceedings will be conducted in a timely and expeditious manner and will be proportional to the issues that must be determined to resolve the dispute.
- Decisions will be issued as soon as possible after a proceeding.

Integrity, Professionalism and Independence

- Members and staff will act with honesty, integrity and professionalism, exhibiting the highest standards of public service.
- Members and staff will work together to build public confidence in ELTO, its constituent tribunals and the administration of justice.
- ELTO and its constituent tribunals must be, and be seen to be, neutral, unbiased and independent from improper influence.

Environment and Land Tribunals Ontario Appointees
April 1, 2010 to March 31, 2011

Executive Chair	
*Gottheil, Michael	November 2, 2009
Alternate Executive Chair	
DeMarco, Jerry V.	September 1, 2010

ARB Appointees	**Original Appointment**
Chair	
*Gottheil, Michael	November 2, 2009
Associate Chair	
Stephenson, Richard F.	April 7, 1993
Vice-Chairs	
Butterworth, Robert	November 19, 1997
Mather, Susan	November 19, 1997
Bourassa, Marcelle	April 11, 2006
Full-Time	
Cowan, Bernard A.	December 19, 1997
Wyger, Joseph M.	May 27, 1998
Whitehurst, Donald	May 18, 2005
Walker, Janet Lea	September 4, 2007
Part-Time	
Andrews, Peter	May 18, 2005
Bachly, David	November 26, 1970
Belanger, Mignonne	January 11, 1984
Birnie, Ian	May 6, 1999
Brown, Douglas C.	June 30, 2000
Brownlie, John D.	May 27, 1998
Castel, André	November 19, 1997
Corcelli, Richard J.	January 15, 2007
Driesel, Sandra	March 16, 2000
Duan, Yucheng Josie	September 29, 2010
Fenus, Andrew	May 30, 2007
Griffith, E.J.W.	November 12, 1970
Griffith, Jennifer	September 17, 2004
Justin, Edith	November 17, 1970
Kowarsky, Barbara	May 18, 2005
Laflamme, Jacques	August 25, 2004
Laregina, Anthony	January 15, 2007
Laws, Joanne	February 10, 2006
Levasseur, Romeo	May 18, 2005
Limoges, Rick	January 15, 2007
Mackay, Ann	August 25, 2004
Marques, Ana Cristina	May 18, 2005
Minnie, Garry	March 1, 2006
Morin, Gilles	September 30, 2004
Nalezinski, Les	March 1, 2006
Oliveira, Evangelista (Ivan)	May 17, 1999
Plumstead, Nicoll	May 18, 2005
Rade, Bernice M.	August 25, 2004
Roberts, Catherine E.	September 29, 2010

Romas, George	August 25, 2004
Saponara, Fausto	May 18, 2005
Sharma, Marilyn	January 15, 2007
Shirtliff-Hinds, Carol	September 29, 2010
Skanes, Tyrone	September 29, 2010
Sloan, Charlotte	September 29, 2010
Smith, Barry A.	November 26, 1970
Stabile, Vincent	September 29, 2010
Stillman, Paul M.	March 26, 1975
Sutton, William (Bill)	September 17, 2004
Tchegus, Robert	February 10, 2006
Tersigni, Joe	May 30, 2001
Walker, Tanya	September 29, 2010
Weagant, Dan	September 29, 2010

BON Appointees	**Original Appointment**
Chair	
*Gottheil, Michael	November 2, 2009
Part-Time Members	
*Boyak, Mark	March 23, 2005
Egan, Terry	June 17, 2009
*Milne, John	November 1, 2000
Simmons, Lawrence John	March 23, 2005
Taylor, Ian	June 20, 2007
Yuen, Jane	December 19, 2008

CRB Appointees	**Original Appointment**
Chair	
*Gottheil, Michael	November 2, 2009
Part-Time Associate Chair	
Zakarow, Peter. A.P.	March 20, 2002
Part-Time Vice-Chair	
Murdoch, Su	February 16, 2005
Part-Time Members	
Harris, Julie	April 16, 2009
Haslam, Karen	December 1, 2004
Henderson, Stuart	June 28, 2006
Kidd, Stuart W.	February 3, 2006

ERT Appointees	**Original Appointment**
Chair	
*Gottheil, Michael	November 2, 2009
Associate Chair	
DeMarco, Jerry V.	June 27, 2005
Executive Vice-Chair	
*Vigod, Toby	December 1, 2004
Vice-Chairs	
Gibbs, Heather	September 20, 2006
Muldoon, Paul	April 4, 2006

VanderBent, Dirk	September 18, 2006
Wright, Robert V.	August 27, 2007
Part-time Members	
Levy, Alan D.	May 9, 2007
Pardy, Bruce	June 22, 2005
Valiante, Marcia	May 9, 2007

OMB Appointees	**Original Appointment**
Chair	
*Gottheil, Michael	November 2, 2009
Associate Chair	
Lee, Wilson S.	July 1, 1988
Vice-Chairs	
Campbell, Susan B.	April 28, 2004
Granger, Donald R.	November 3, 1997
Hussey, Karlene	April 20, 2005
Jackson, Norman C.	October 6, 1997
Mckenzie, James	July 3, 2007
Schiller, Susan	September 6, 2005
Seaborn, Jan de Pencier	May 31, 2000
Stefanko, Steven	April 20, 2005
Zuidema, Jyoti	August 20, 2007
Members	
*Aker, John R.	May 10, 2000
Atcheson, J. Peter	July 5, 2004
Chee-Hing, Jason	September 1, 2004
Christou, Aristotle	April 16, 2008
Conti, Chris	July 3, 2007
Denhez, Marc	May 31, 2004
Goldkind, Harold	February 7, 2007
Hefferon, Colin	September 20, 2006
*O'Connor, Gary	November 1, 2004
Rossi, Reid	May 31, 2004
Sills, Mary-Anne	July 3, 2007
Sniezek, Joseph E.	June 23, 2004
*Somers, Michael G.	November 29, 2006
Sutherland, Sylvia	March 21, 2007
Wong, Joe. G.	April 16, 2008

*Indicates Appointees who were no longer with ELTO as of March 31, 2011.

Financial Summary by Tribunal

Assessment Review Board

ARB Expenditures 2008-2009 to 2010-2011

ACCOUNT ITEMS	2008-2009 ($)	2009-2010 ($)	2010-2011 ($)
Salary and Wages	4,717,539	4,544,199	5,069,334
Employee Benefits	653,728	610,359	592,736
Transportation and Communications	608,274	496,175	562,773
Services	1,994,542	2,325,650	2,489,442
Supplies & Equipment	191,616	182,710	120,239
Transfer Payment	NIL	NIL	NIL
TOTAL	**8,165,699**	**8,159,093**	**8,834,524**

Fees Collected

Under the authority of the Assessment Review Board Act, appeals must be accompanied by the required filing fee. All filing fees, which vary depending on property type, are remitted to the Ministry of Finance.

ARB Fees Collected 2008-2009 to 2010-2011

FISCAL YEAR	REVENUE COLLECTED ($)
2008-2009	**2,224,487**
2009-2010	**3,276,776**
2010-2011	**704,375**

Note: 2009 was the first of a four year assessment cycle, in 2010-11 revenues naturally declined with fewer appeals filed.

Board of Negotiation

A single budget for the OMB and the BON is provided within the *Estimates of the Ministry of the Attorney General* on a fiscal-year basis.

Conservation Review Board

CRB Expenditures 2008-2009 to 2010-2011

ACCOUNT ITEMS	2008-2009 ($)	2009-2010 ($)	2010-2011 ($)
Salary and Wages	37,784	55,800	55,294
Employee Benefits	4,804	5,430	7,039
Transportation and Communications	14,366	6,605	9,314
Services	148,433	124,293	103,987
Supplies & Equipment	1,328	2,515	NIL
TOTAL	**206,715**	**194,643**	**175,634**

Environmental Review Tribunal

ERT Expenditures 2008-2009 to 2010-2011

ACCOUNT ITEMS	2008-2009 ($)	2009-2010 ($)	2010-2011 ($)
Salary and Wages	1,155,200	1,056,615	1,018,981
***Employee Benefits**	*	*	134,306
Transportation and Communications	33,570	31,657	37,186
Services	380,461	441,101	420,721
Supplies & Equipment	44,025	30,310	26,732
TOTAL	**1,613,256**	**1,546,400**	**1,637,926**

** Prior to 2010-11, Employee Benefits were managed centrally by the Ministry of the Environment.*

Ontario Municipal Board

Allocation
A single budget for the OMB and the BON is provided within the *Estimates of the Ministry of the Attorney General* on a fiscal-year basis.

OMB and BON Expenditures 2008-2009 to 2010-2011

ACCOUNT ITEM	2008-2009 ($)	2009-2010 ($)	2010-2011 ($)
Salary and Wages	5,739,638	5,658,557	5,520,277
Employee Benefits	740,579	754,583	750,534
Transportation & Communications	666,632	579,860	507,589
Services	534,929	217,482	978,071
Supplies and Equipment	134,653	54,991	48,652
Transfer Payments	NIL	NIL	NIL
TOTAL	**7,816,431**	**7,265,473**	**7,805,123**

Fees Collected

Under the authority of section 100 of the Ontario Municipal Board Act, filing fees have been set for each application or appeal filed with the OMB. The standard fee is $125. All fees collected by the OMB are remitted to the Ministry of Finance.

OMB Revenue 2008-2009 to 2010-2011

FISCAL YEAR	FEES COLLECTED ($)
2008-2009	237,416
2009-2010	209,921
2010-2011	330,225

*Source: public accounts

Part 2: Overview of the Tribunals

SECTION 1: ASSESSMENT REVIEW BOARD (ARB)

About the Board

The Assessment Review Board (ARB) is an independent adjudicative tribunal established under the Assessment Act, with a mandate to hear appeals about property assessment and classification. The ARB hears these appeals and renders a decision based on the applicable law and the evidence presented at the hearing.

The Board, which operates under a variety of legislation, also deals with appeals on property tax under the Municipal Act, the City of Toronto Act and the Provincial Land Tax Act.

The Property Assessment System

The provincial government, through the Ministry of Finance, sets the laws regarding property assessment. Municipalities are responsible for setting tax rates and collecting property taxes. The Municipal Property Assessment Corporation (MPAC) assesses and classifies all properties in Ontario. If there is a dispute between a property owner and MPAC, the property owner can file an appeal with the Assessment Review Board (ARB).

Purpose of the Board

The Board receives appeals on property assessments and property taxes. Hearings are scheduled across the province, usually in the municipality where the property is located. At the hearing, all parties have the opportunity to present evidence and make arguments. The Board hears these appeals and makes a decision based on the applicable law and the evidence presented at the hearing.

History and Jurisdiction

Property assessments have been conducted in what is now Ontario since 1793. In 1970, the province assumed the role of assessing property from municipalities and replaced the Courts of Revision with the Assessment Review Court (ARC). ARC was renamed the Assessment Review Board in 1983.

With the enactment of the Fair Municipal Finance Act, 1997, the ARB became the province's sole adjudicative tribunal for property assessment appeals. The legislation reduced duplication and ensured that the Board was the final tribunal of appeal for such appeals. Prior to 1998, ARB decisions could be appealed to the Ontario Municipal Board (OMB).

In 1998, an amendment to the Assessment Review Board Act gave the ARB the capacity to dismiss frivolous appeals.

Decisions by the Board are final and binding, subject only to appeal to Divisional Court on questions of law when the Court grants leave to appeal. The Board also exercises the power to review its decisions.

Beginning with the 2009 tax year, changes to the Assessment Act require owners of residential, farm and conservation lands, and managed forests to file a request for reconsideration with MPAC, and/or the Program Administrator (for farm, managed forest or conservation land), before they may file an appeal with the ARB.

The Board's jurisdiction and its authority are defined by the Assessment Review Board Act, the Assessment Act, the Municipal Act, 2001, the City of Toronto Act, 2006, the Provincial Land Tax Act, 2006, the Education Act and the Statutory Powers Procedure Act.

Changes to Legislation and Rules

The following is a summary of changes to the legislation and regulations in 2010-2011:

1. Assessment Act

Subsection 3(1) of the Assessment Act provides that certain types of real property are exempt from taxation under the Act. Paragraph 29 of subsection 3(1) of the Act exempts certain structures, such as poles and wires that are owned by power utilities or municipal electricity utilities.

On December 8, 2010, the Helping Ontario Families and Managing Responsibly Act, 2010, received Royal Assent, amending paragraph 29 of subsection 3(1) of the Act to delete a pre-condition for the exemption: that the structure must be located on an easement on land not owned by a power utility. The exemption now includes certain structures owned by utilities, regardless of their location, and applies retroactively to January 1, 1998.

2. Temporary On-farm Housing for Labourers

On December 13, 2010, Ontario Regulation 491/10 amended Regulation 282/98 to include temporary housing for on-farm labourers under the farm property class if certain conditions are satisfied. New subsection 8(5.5) requires for 2011 and subsequent taxation years that the housing not be occupied on a year-round basis; and be situated on land that is both included in the farm property class, and used exclusively for farm purposes.

3. Retirement Homes

On January 1, 2011, Ontario Regulation 372/10 amended subsection 3(1) of Regulation 282/90 to include a retirement home (as defined in subsection 2 (1) of the Retirement Homes Act, 2010) under the residential property class.

There were no changes to the Rules of Practice and Procedure during this fiscal year.

2010-2011 Caseload

At the beginning of the 2010-2011 fiscal year, the ARB had a total of 89,000 appeals on file. During the 2010-2011 fiscal year the Board received approximately 40,000 appeals. By the end of the fiscal year, over 39,000 appeals were resolved. The bulk of the outstanding caseload at the end of the fiscal year consisted mostly of complex, non-residential properties from previous years.

In complex cases more time may be required by the parties to gather evidence and prepare testimony.

ARB Caseload 2008-2009 to 2010-2011

YEAR		2008-2009	2009-2010	2010-2011
Opening Caseload Balance		**78,000**	**79,000**	**89,000**
Caseload Received*	**+**	**46,000**	**54,000**	**40,000**
Total Caseload for year	**=**	**124,000**	**133,000**	**129,000**
Resolved Caseload	**-**	**45,000**	**44,000**	**39,000**
Balance at the End of the Fiscal Period	**=**	**79,000**	**89,000**	**90,000**

Note: *The deadline for assessment appeals to the ARB was March 31, 2011 or 90 days from the date of MPAC's request for reconsideration decision.*

** **Caseload Received** includes all types of appeals dealt with by the Board, including annual assessment appeals, supplementary and omitted assessment appeals, Municipal Act appeals and City of Toronto Act appeals.*

Performance Results

The ARB hears all assessment appeals in Ontario. Generally, residential appeals can be streamed directly to a full hearing and are consequently resolved faster than many non-residential appeals, which may require multiple hearing events.

The ARB works to resolve residential appeals within one year of filing. In the 2010-2011 fiscal year, 87 per cent of unrepresented residential appeals were resolved within 365 days of filing.

The ARB strives to issue its decisions in a timely manner. In the 2010-2011 fiscal year, 86 per cent of decisions were issued within 60 days of the hearing.

Process of the Board

Pre-hearings

Many appeals concerning complex, non-residential properties require extensive hearing time and may be presided over by a panel of Members. These appeals are screened based on established criteria such as property classification, size and assessed value, and may be directed into pre-hearings.

During the pre-hearing process, the Board works with the parties to establish a schedule for proceeding and may issue procedural orders to direct exchanges of information and pre-filings. Pre-hearings have the potential to expedite the hearing process and allow parties to reach a settlement before a hearing begins.

Hearings

Hearings give an appellant the chance to explain why he or she thinks the property assessment from the Municipal Property Assessment Corporation (MPAC) is wrong. During the hearing the parties present evidence and question each other on that evidence. At the end of the hearing the Member who is overseeing the hearing makes a decision or may reserve the decision for a later date.

Teleconferences

It can sometimes be difficult and time consuming to coordinate a hearing when parties need to travel across the province. For these cases, the Board conducts telephone conferencing, or "electronic hearings." In 2010-2011, the Board conducted more than 1,300 teleconferences. Teleconferencing is a practical way to provide status updates and determine next steps toward issuing procedural or consent orders, resolving contentious matters and, in some instances, settling appeals. This service saves time and money by reducing travel for all parties involved in Board hearings.

Decisions

After the Member has received all submissions from the parties, the Member considers the submissions. The Member may give an oral decision at that time or may reserve the decision for a later date. If the decision is reserved, a decision with Written Reasons will be mailed to the parties.

SECTION 2: BOARD OF NEGOTIATION (BON)

About the Board

The BON provides mediation services to parties involved in disputes over the value of expropriated land – the land owner on the one hand, and the expropriating authority on the other (typically the Crown or a municipality). The BON becomes involved only after alternative avenues for settlement have not succeeded. Meetings with the parties are held throughout Ontario at no cost to either party. The BON views the property, reviews all written documentation and considers the submissions from the parties.

Purpose of the Board

Through mediation, the BON tries to help parties reach a resolution. While it has no power to impose a settlement, the BON will, where sufficient information has been submitted, provide a recommendation to the parties on what would be fair compensation.

Subsection 27(5) of the Expropriations Act provides that BON Members must view the property in question prior to, or during, the hearing. Using its expert mediators, the BON has been able to achieve a high rate of success with the cases brought before it.

History and Jurisdiction

The BON was formed under the authority of the Expropriations Procedures Act 1962/63. The act, which came into force on January 1, 1964, represented one of the recommendations of the report by the Select Committee on Land Expropriation. As a result of subsequent studies on compensation and procedures, including the reports for the Ontario Law Reform Commission, the Expropriations Act came into force on January 1, 1970.

Caseload

The number of files received and meetings held for the last three years is summarized in the following table.

BON Files Received, Meetings Held and Open Files

	2008-2009	2009-2010	2010-2011
Files Received	**30**	**26**	**34**
Meetings Held	**20**	**26**	**28**
Open Files (as of March 31)	**27**	**18**	**17**

Process

The Board holds negotiation meetings at the request of a party. There is no cost to the party to apply or have a matter heard at the Board. When a request is received, an acknowledgement letter is sent to the requesting party asking for their availability. When a date is determined the BON sends a notice to the parties informing them of the date of the meeting.

BON mediation is confidential. If a settlement cannot be reached at the BON, the parties may bring the matter to the Ontario Municipal Board (OMB). However, because of the confidentiality of the mediation process, the BON and OMB take strict measures to ensure that any information received by the BON is kept apart from the OMB. OMB Members and staff do not have access to any information or discussions that were part of the BON process.

SECTION 3: CONSERVATION REVIEW BOARD (CRB)

About the Board

The Conservation Review Board is an adjudicative tribunal that hears disputes on matters relating to the protection of properties considered to hold cultural heritage value or interest to a municipality or to the Minister of Culture, as defined by the Ontario Heritage Act (Act).

Purpose of the Board

The CRB receives referrals of objections or applications under the Act concerning either properties of potential heritage value or interest, or archaeological licensing. Cases are received from either municipalities or the Minister of Culture. Through a proceeding, the Review Board attempts to settle a dispute and/or hears evidence and arguments by parties. The ultimate result, where a case is not settled, is the development of a Recommendation of the CRB which is submitted for the consideration of the final decision making body for that case, which is either a local municipal Council or the Minister of Culture. The CRB is an independent adjudicative agency subject to the rules of natural justice and many of the requirements of the Statutory Powers Procedure Act.

History & Jurisdiction

The CRB was established in 1975 under Part III of the Ontario Heritage Act (R.S.O. 1990, Chapter O.18, as amended).

The CRB conducts proceedings on matters that are referred, which includes both pre-hearing conferences to explore the potential of settlement as well as formal hearings to hear evidence and arguments to best enable the Review Board to make recommendations to the final decision making power for that particular case. The CRB has responsibilities under both Part IV and Part VI of the Act.

In 2005, changes to the Act gave the CRB additional responsibilities. The CRB now hears objections concerning properties deemed provincially significant by the Minister of Culture under Part IV of the Act. As well, the Act now permits the cross-appointment of CRB members to OMB panels hearing certain appeals under the Act.

In 2009, an Order in Council transferred responsibility for the CRB from the Ministry of Culture to the Ministry of the Attorney General (MAG).

The CRB's jurisdiction and its authority are defined by the Ontario Heritage Act and the Statutory Powers Procedure Act.

Caseload

CRB cases continue to be complex in terms of legal interpretation of the Act, the degree of sophistication in party arguments and evidentiary submissions, and the layering of cultural heritage elements. The Board has responded to these pressures with increased member training, closer interaction with Board legal counsel, and a standardization of administrative practices.

At the beginning of the 10/11 fiscal year, the Board had 21 open files. Between April 1, 2010 and March 31, 2011, eight referrals were received from municipalities. Of the eight referrals, five were received under s.29 of the act, two under s. 30 and one under s.31. No referrals were received from the Minister of Culture.

The Board was successful in settling the majority of matters referred during the past fiscal year through its use of pre-hearing conferences.

In total, 20 referrals were resolved during the past fiscal year. Three full hearings were held and for each one a report was made to council. The CRB held 27 pre-hearing conferences with each referral having an average of two pre-hearing conferences before resolution by withdrawal or hearing. The CRB had nine active files as of March 31, 2011.

	Fiscal Year		
	2008-2009	2009-2010	2010-2011
Cases Received	25	16	8
Pre-Hearing Conferences	47	38	27
Reports Issued	4	3	3
Withdrawals	24	19	17
Open Cases (as of March 31)	27	21	9

Process

Process Overview

Once an objection is referred to the CRB, a formal process begins that structures how the objection will be heard and how a party and members of the public will be permitted to participate. Each referral is assigned a Board "case file number" and the file is assessed for completeness of information, any jurisdictional issues are resolved, and a Pre-Hearing Conference is scheduled.

Pre-Hearing Conferences

The Board has a Rule that makes pre-hearing conferences (PHC) mandatory for all matters that come before it. The PHC provides an opportunity for all parties (objector(s), municipality or Minister of Culture, the property owner, and other recognized parties, as applicable) to discuss the issues with each other and with the Board, without prejudice. The two fundamental interests in conducting the PHC are to seek a mediated settlement of the dispute and to prepare all parties for the formal hearing process where settlement is not successful.

The PHC is only open to the official parties to the hearing; therefore no members of the public may be involved. It is normally a telephone conference call, but can be an in-person meeting. The PHC is not intended to be the forum to discuss the arguments of a case, and thus no evidence is presented and no final decisions are made. Some evidence may be permitted by the Board to further support the positions of each party and to seek a settlement.

These PHCs are conducted "Without Prejudice." This means that if a party makes a statement in the spirit of settlement, but a settlement is not reached, no statements or comments can be used against them in the event of a formal hearing.

If a full settlement is reached, each objector and the property owner (if applicable) must submit a letter of Withdrawal of Objection to the Board, or the municipality must submit a letter of Withdrawal of the Notice of Intention to Designate and the case is closed. If a settlement is not reached, the PHC proceeds to the phase of preparing all parties for the formal hearing.

Hearings

While CRB hearings are less formal than many types of legal proceedings, they are still governed by rules of procedure and conducted in a quasi-judicial, structured manner. Most parties are represented by legal counsel. Those without legal counsel must become familiar with the Review Board's Rules of Practice and Procedure, the Ontario Heritage Act and the Statutory Powers Procedure Act.

Unlike the PHC, hearings are fully open to the public. It is the practice of the Board to hold the hearing within the municipality of the subject property, and to conduct a site visit of the property before the commencement of the hearing.

Recommendations

After the hearing, the Board issues a report to the municipal council, or the Minister of Culture, whichever has jurisdiction, making recommendations based on the evidence presented and arguments made at the hearing. Typically, the Board attempts to release the report within 30 days, but a later release does not invalidate the hearing process. The Board's case file is then closed. The municipal council or the Minister makes the final decision on the matter, taking the Board's report into account.

SECTION 4: ENVIRONMENTAL REVIEW TRIBUNAL (ERT)

About the Tribunal

The Tribunal is an administrative tribunal which operates under rules of procedural fairness, the rules of natural justice, and the requirements of its governing legislation and the Statutory Powers Procedure Act. The Tribunal Members, who are Order-in-Council appointees, conduct fair, efficient and impartial hearings and make decisions, issue reports or make recommendations, with written reasons that are based on the applicable law, the evidence presented, and statutory duties to protect the environment.

Purpose of the Tribunal

The Tribunal resolves applications and appeals under the following statutes: Clean Water Act, 2006, Consolidated Hearings Act, Environmental Assessment Act, Environmental Bill of Rights, 1993, Environmental Protection Act, Niagara Escarpment Planning and Development Act, Nutrient Management Act, 2002, Ontario Water Resources Act, Pesticides Act, Safe Drinking Water Act, 2002 and the Toxics Reduction Act, 2009. The Tribunal also hears matters under the Oak Ridges Moraine Conservation Act, 2001 and the Greenbelt Act, 2005.

Under the Niagara Escarpment Planning and Development Act, Members of the Tribunal are appointed by the Minister of Natural Resources as Hearing Officers to conduct hearings. The Hearing Officers issue reports or make recommendations concerning appeals of decisions of the Niagara Escarpment Commission regarding development permit applications. Members are also appointed to conduct public hearings for the purpose of making recommendations regarding proposed Niagara Escarpment Plan (NEP) amendments. Every 10 years, Members conduct hearings to review the NEP.

Pursuant to a designation as the Office of Consolidated Hearings, the Tribunal administers hearings as requested under the Consolidated Hearings Act. Under the authority of the Consolidated Hearings Act, a Joint Board is established in order to combine into one hearing a multiplicity of hearings before different tribunals under various acts on matters relating to the same undertaking. A Joint Board usually consists of Members of the Tribunal and the Ontario Municipal Board and is empowered to hold a hearing to consider all of the matters under all of the acts that govern the undertaking and for which hearings are required.

History

The Environmental Review Tribunal (ERT) was established under the Environmental Review Tribunal Act, 2000 with the merging of the Environmental Assessment Board and the Environmental Appeal Board. All the roles of those two Boards were taken on by the ERT at that time.

When the Ontario Water Resources Act passed in 1970, the Environmental Hearing Board (EHB) was created. The EHB heard some of the matters of the Ontario Water Resources Commission, established in 1956. The EHB then became the Environmental Assessment Board in 1975. It held hearings about waste or sewage disposal sites as well as environmental assessments. It also had a role in appeals from decisions of the Niagara Escarpment Commission and in joint board hearings under the Consolidated Hearings Act. These areas were assumed by the ERT.

The Environmental Appeal Board established under the Environmental Protection Act, 1971, held hearings on appeals about decisions made by Directors of the Ministry of the Environment. In 1978, this Board also took on the hearings role of the Pesticides Appeal Board, which was established in 1973.

Changes to Legislation and Rules

As part of the government's Open for Business initiative, legislation was passed in 2010 to modernize the environmental approvals process. For those activities requiring a Certificate of Approval under Ministry of the Environment legislation, a new Environmental Compliance Approval (ECA) system has been developed. Based on the risk posed to the environment or human health of its activities, a facility may be required to obtain an ECA or register its activities on a new searchable online registry. The new system is expected to be implemented from September 2011 onwards and may require changes to the ERT's Rules of Practice and operations and result in an increased workload.

On July 9, 2010, the ERT adopted and posted on its website, new Rules of Practice and Practice Directions. The most significant changes to the Rules are:

- New Rules respecting appeals by members of the public of renewable energy approvals
- New requirement for an Acknowledgment of Expert's Duty form to be signed and provided to the ERT by witnesses who are providing expert opinion evidence
- New Rules to facilitate efficient and effective ERT hearing processes.

Caseload

At the beginning of the fiscal year, the Environmental Review Tribunal carried forward 37 cases from the 2009-2010 fiscal year. During the 2010-2011 fiscal year, the Tribunal received 180 appeals/applications and requests for hearings. The table below provides a breakdown by legislation type. As some matters may be heard together, the overall caseload received for the year was 87. By the end of the fiscal year, 69 cases were resolved, leaving 55 cases to be carried forward into the next year.

Appeals/Applications & Requests for Hearings received 2008-2009 to 2010-2011

Case Type	2008-2009	2009-2010	2010-2011
Environmental Bill of Rights, 1993	14	27	14 (8%)
Environmental Protection Act *	70	55	53 (28%)
Nutrient Management Act, 2002	0	0	1 (1%)
Ontario Water Resources Act	7	10	7 (4%)
Safe Drinking Water Act, 2002	8	2	1 (1 %)
NEPDA – Development Permits	78	93	103 (57%)
NEPDA – Plan Amendments	0	1	0 (0%)
Consolidated Hearings Act	3	0	1 (1%)
Total	**180**	**188**	**180**

**Includes three appeals of a Renewable Energy Approval by a Third Party.*

Consolidated Hearings

The Environmental Review Tribunal has administrative responsibility for the Consolidated Hearings Act (CHA). This administrative responsibility is conducted under the designation of the Office of Consolidated Hearings. During 2010-2011, the Office of Consolidated Hearings received one request for a consolidated hearing under the Planning Act and the Environmental Assessment Act. Three consolidated hearing matters were also carried forward from the previous fiscal year.

Hearing Activity

The Tribunal held 237 hearing events, including motions, during the fiscal year. Pre-hearing conferences are offered in appeals of development permit applications under the Niagara Escarpment Planning and Development Act and provide an opportunity to clarify, refine or settle the issues. For the fiscal year there were 34 pre-hearing conferences.

Mediation is offered to all parties and is voluntary. For the 2010-2011 fiscal year there were 29 mediation events held.

The Tribunal may also schedule a preliminary hearing to facilitate preparation for a main Hearing. The Member issues a written order after the preliminary hearing. In the 2010-2011 fiscal year, 60 preliminary hearing events were held.

Where practical, the Tribunal also conducts some events by teleconference to facilitate case status updates or determine next steps to avoid unnecessary travel and time to those involved. In 2010-2011, the Tribunal held 53 teleconference events.

The Tribunal also conducts Written Hearings for Leave to Appeal applications under the Environmental Bill of Rights, 1993.

Performance Results

The Tribunal works to schedule hearings within seven days of receipt of all required information. In 2010/2011, the Tribunal waited an average of 24 days for missing information from filed matters, but once received, scheduled the hearing in an average of four days.

The Tribunal issues decisions in compliance with all legislated deadlines. For those decisions without legislated requirements, excluding decisions under the Consolidated Hearings Act, the Tribunal endeavours to render 85 per cent of these decisions within 60 days following the conclusion of the hearing or filing of final written submissions (if ordered by the hearing panel). For the 2010-2011 fiscal year 88.5 per cent of theses decisions were issued within 60 days.

Process

The Tribunal Members are responsible for conducting pre-hearings, hearings and the issuance of written decisions.

The processing of appeals/applications, which is performed by the Tribunal staff, includes all administrative steps necessary to schedule and resolve an appeal/application from the date of filing to the closing of the file.

When an appeal/application is received, it is dealt with through an administrative process that includes:

- Reviewing the appeal/application to assess its validity
- Acknowledging the appeal/application and requesting further information, if required
- Scheduling the hearing
- Monitoring and managing the case throughout the process
- Posting orders and the final written decision on the website.

Mediation

The use of mediation encourages the parties to discuss the issues in dispute in an attempt to narrow or settle differences. The successful results achieved during mediation often eliminate the need for a hearing or reduce the number of scheduled hearing days.

The Members who conduct Tribunal mediations have received certified training. Mediation, which is offered in all appeal and application hearings (except in matters under the NEPDA, Oak Ridges Moraine Conservation Act, 2001 and the Greenbelt Act, 2005) is conducted after a preliminary hearing and, generally, 30 days prior to the commencement of the main hearing. However, should the parties choose not to participate at that time, mediation services are available any time throughout the hearing process upon request.

SECTION 5: ONTARIO MUNICIPAL BOARD (OMB)

About the Board

The Ontario Municipal Board (OMB) is an independent adjudicative tribunal that conducts hearings and makes decisions on matters that have been appealed to the Board under specific provincial legislation. The majority of appeals arise from applications filed with municipalities under the Planning Act, such as official plans, zoning by-laws, subdivision plans, consents and minor variances, or claims for land compensation filed under the Expropriations Act, development charges, ward boundaries and aggregate resources.

Purpose of the Board

Along with other regulatory and adjudicative agencies, the OMB helps form the administrative justice sector in Ontario. Its processes are designed to resolve disputes in an informal, less costly and more timely manner than in the courts. OMB Members make independent decisions based on the applicable law and policies, and the evidence presented at the hearing.

The Ontario government plays an active role in Provincial land use planning, by the enactment of legislation, policy statements or Provincial Plans, authorized under the Planning Act. Municipalities develop land use planning instruments and local rules which are to conform with Provincial policy. When a dispute arises, certain appeals can be filed with the Ontario Municipal Board under the Planning Act and other land related legislation.

History & Jurisdiction

The OMB is one of the province's longest-standing adjudicative tribunals. In 1906, the OMB assumed its initial responsibilities, including those previously carried out by the Office of the Provincial Municipal Auditor. Originally named the Ontario Railway and Municipal Board, it was created to oversee municipalities' accounts and to supervise the rapidly growing rail transportation system between and within municipalities. It was renamed the Ontario Municipal Board in 1932.

Over the years, the role and mandate of the Board has changed. In 2003, the Province embarked upon a wide range of planning reforms that have had a significant impact on the Board. These reforms have re-defined the role of the Province in land use planning, reduced the role of the Board in the review of planning matters, and have increased the role of local municipal decision-making.

The first of these reforms was the introduction of the Greenbelt Protection Act, 2004. This Act designated a Greenbelt study area within the GTA Regions, the City of Toronto, the Oak Ridges Moraine, the Niagara Escarpment Plan and certain lands within Niagara Region.

In June 2005 the legislature passed the Places to Grow Act. This Act authorizes a provincial plan to apply to the area subject to the Greenbelt Plan. Appeals of these municipal plan amendments (to bring Official Plans into conformity with the Growth Plan) are conducted under the *Planning Act* and are therefore heard by the OMB, unless otherwise determined by the Minister of Municipal Affairs and Housing and the Minister of Infrastructure.

In October 2006, the Province introduced comprehensive amendments to the Planning Act, known as Bill 51.

The Board's mandate has evolved to that of an appeal Board that is required to make decisions that conform to provincial plans and are consistent with provincial policy statements. Further, the Board's role in land use planning has also been restricted as it may only hear certain appeals that are authorized by the Planning Act.

Changes to Legislation and Rules

There were no significant legislative changes or changes to the Boards Rules of Practice and Procedure. However, it is important to note that the Rules of Civil Procedure were amended in 2010 to require that expert witnesses sign an acknowledgement form (set out as Form 53 to the Rules) to confirm their duty to provide opinion evidence that is fair, objective and non-partisan. The OMB is routinely requiring an expert to execute this acknowledgement form in lengthy hearings of appeals.

Caseload

Files Received

File intake increased by 12 per cent during the 2010-2011 fiscal year. Patterns of intake from a geographic perspective continue to follow patterns found in previous years with the largest number of files, about one-fourth, involving the City of Toronto.

The GTA accounts for about 47 per cent of the Board's intake. Ottawa, York, and Simcoe represent the next largest areas, each with seven percent of the Board's intake for the year. The requirement in the Planning Act for municipalities to bring their official plans into conformity with provincial plans and policy statements led to a large number of appeals to the Board both from the decisions or lack of decisions from approval authorities. In addition, a number of municipalities updated their major by-laws resulting in many appeals to the Board. See the table that follows for the types of files received by the Board.

OMB File Types Received 2008-2009 to 2010-2011

File Types Received (Appeals and Applications)	2008-2009	2009-2010	2010-2011
Minor Variances	552	363	495
Consents	260	176	229
Zoning By-laws	190	187	197
Official Plans	162	169	172
Zoning Refusal or Inaction	163	146	160
Plans of Subdivision	68	76	98
Municipal and Miscellaneous (incl. site plans)	83	68	90
Development Charges	15	60	9
Land Compensation	29	42	34
Municipal Finance	9	11	9
Joint Board	2	1	1
Other	48	33	
TOTAL	**1,581**	**1,332**	**1494**

Hearing Activity

The Board scheduled 1,862 hearing events in 2010-2011, a slight increase in the number of hearings from the previous year. Of the 1,862 hearings scheduled, 1,261 resulted in a hearing before the Board. The Board continues to use the pre-hearing process on complex cases to refine or settle issues so that hearings, if still needed, are focused and more efficient.

The Board has increased its ability to respond to client requests for quick access to adjudication on new cases or timely interventions on ongoing cases where the parties require an adjudicative determination to keep the case on track to resolution.

Mediation

The Board's mediation program continues to provide enhanced service to Board clients. Many matters have been settled as the result of Board mediation. Mediations have been shown to shorten the time for resolution and to be less costly for the parties. Mediation efforts in relation to land compensation cases have had the greatest success. For the 2010-2011 fiscal year, there were 52 mediation events held.

Performance Results

The scheduling of hearing dates at the OMB depends on many factors including: the correct filing of documents, the number of witnesses expected, the availability of hearing rooms and the readiness of parties to proceed.

- For stand-alone minor variance appeals, 90 per cent of the cases had a first hearing event within 120 days of filing.
- For all other types of applications and appeals, 85 per cent of the cases had a first hearing event within 180 days of filing of the last application that formed part of the case.

The OMB strives to issue its decisions in a timely manner. In the 2010-2011 fiscal year:

- 85 per cent of decisions were issued within 60 days of the hearing.

Process

Disputes are brought to the OMB by filing an appeal. Depending on the type of dispute, there are different processes and timelines for filing an appeal. The OMB reviews the appeal and with the input or upon the request of a party or upon the request and consent of all parties may stream the case into mediation, motion, pre-hearing or hearing. Most appeals are resolved by a full hearing.

The OMB holds hearings across the province, most often in the municipality where the property is located. The OMB holds hearing events by teleconference when it is appropriate. Teleconference proceedings are often used for such events as pre-hearings and settlement hearings. The use of teleconference proceedings allows the OMB to respond quickly and is time and cost efficient for the parties. In 2010-2011 teleconference events represented 23 percent of hearing events. OMB Members hear the appeal and make independent decisions based on the evidence presented at the hearing, provincial law, the provincial planning policy, municipal planning documents, previous Board decisions (if applicable) and the principles of good planning.

Case Management

The OMB's case management department supports the adjudication of matters by managing the processing of all appeals/applications received by the Board from intake through to resolution, with the exception of the adjudication of matters by Members of the Board.

The department is divided into three teams: two planning teams and a hearings team. The planning teams are based on regional areas. This team structure helps to streamline cases and provides clients with a consistent point of contact with staff. Assigning caseload responsibility along regional lines also allows managers and staff to build regional expertise, monitor local issues and anticipate matters that could be brought to the OMB for adjudication.

The hearings team is responsible for the scheduling and facilities coordination of all hearing events across the province. The Associate Chair assigns Members to hearings and the hearings team helps provide information to the Members so they can conduct hearings across the province.